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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91218523
Party	Defendant 13th Ave Fish Market Inc. DBA Freund's Fish
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Date	12/14/2015
Attachments	2015.12.14 - Response to Opposer Motion to Amend.pdf(77751 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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Oakhurst Industries, Inc. DBA Freund Baking Co.,

Opposer,

v.

Opposition No. 91218523

13th Ave Fish Market Inc. DBA Freund's Fish,

Applicant.

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**RESPONSE OF APPLICANT 13th AVE FISH MARKET INC. DBA FREUND'S FISH TO
OPPOSER'S MOTION TO AMEND NOTICE OF OPPOSITION**

Opposer Oakhurst Industries, Inc., d/b/a Freund Baking Co., has moved to amend its Notice of Opposition to withdraw its dilution claim, and to reflect that Opposer's fraud claim has been stricken by the Board. (Paper no. 26, Mot. to Amend filed Nov. 28, 2015.) Opposer seeks to withdraw its dilution claim with prejudice.

Applicant, 13th Ave Fish Market Inc. d/b/a Freund's Fish, does not in principle oppose Opposer's motion to withdraw its dilution claim with prejudice (although it was not proposed as a withdrawal *with prejudice* when Opposer asked whether Applicant would consent to Opposer's dismissal of its dilution claim). Applicant submits, however, that the motion is in contravention of the Board's Suspension Order dated November 12, 2015, insofar as it is not relevant to either of the pending motions that precipitated the Suspension Order.

If the motion to amend to withdraw the dilution claim with prejudice is viewed as relevant to the pending motions and subject to the Board's consideration under the Suspension Order, Applicant respectfully requests the opportunity to respond substantively thereto.

Dated: December 14, 2015

Respectfully submitted,

/s/ Lesley M. Grossberg
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Attorneys for Applicant
13th Ave Fish Market Inc., DBA Freund's
Fish

CERTIFICATE OF SERVICE

I hereby certify that the foregoing RESPONSE TO OPPOSER'S MOTION TO AMEND NOTICE OF OPPOSITION was served on Opposer's counsel this 14th day of December, 2015, by first class mail, postage prepaid, in an envelope addressed as follows:

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/s/ Lesley M. Grossberg
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